

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CURTIS DIONTE COPELAND, # 600227,

Petitioner,

v.

SHAWN BREWER,

Respondent.

CASE NO. 2:14-CV-14363

HONORABLE DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

/

**ORDER DIRECTING THE CLERK OF THE COURT TO TRANSFER THE
MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL [Dkt. # 17] TO
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

On April 15, 2015, this Court granted petitioner an unconditional writ of habeas corpus, finding that there had been insufficient evidence presented at trial to prove beyond a reasonable doubt that petitioner had committed the crime of receiving and concealing a stolen motor vehicle and being an habitual offender.

On April 17, 2015, respondent filed a notice of appeal. Respondent also paid the appellate filing fee.

Petitioner has filed an application to proceed without prepayment of fees or costs on appeal. For the reasons stated below, the Court orders that the motion for leave to appeal *in forma pauperis* to be transferred to the United States Court of Appeals for the Sixth Circuit.

A notice of appeal generally “confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.” *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985)(citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)(per curiam)); *Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992). Respondent’s notice of appeal divests this Court of jurisdiction to consider petitioner’s motion that he be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. See e.g. *Johnson v. Woods*, No. 5:12-11632; 2013 WL 557271, * 2 (E.D. Mich. February 13, 2013); *Glick v. U.S. Civil Service Com’n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983); *Brinton v. Gaffney*, 560 F. Supp. 28, 29-30 (E.D. Pa. 1983). Because jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, petitioner’s motion to proceed *in forma pauperis* on appeal would be more appropriately addressed to the Sixth Circuit. In the interests of justice, this Court can order that petitioner’s application to proceed *in forma pauperis* be transferred to the Sixth Circuit for that court’s consideration. See *Baker v. Perry*, No. 2:12-10424; 2012 WL 6097323, * 2 (E.D. Mich. December 6, 2012).¹

IT IS HEREBY ORDERED that the Clerk of the Court transfer Petitioner’s “Application to proceed without prepaying fees or costs on appeal” [Dkt. # 17] to

¹ It is not even clear whether petitioner would be required to obtain permission to proceed *in forma pauperis* on appeal, as he is the appellee in this case. Fed. R. App. P. 3(e) states: “Upon filing a notice of appeal, the *appellant* must pay the district clerk all required fees.” (Emphasis added).

the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

S/Denise Page Hood

Denise Page Hood

United States District Judge

Dated: May 28, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 28, 2015, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager